

**VIRGINIA RESIDENTIAL
LANDLORD - TENANT LAW**

**THREE TOPICS: LEASE
TERMINATIONS,
REPAIRS, SECURITY DEPOSITS**

December 2017

Martin Wegbreit, Director of Litigation
804-200-6045, marty@cvas.org

Central Virginia Legal Aid Society
101 West Broad Street, Suite #101
P.O. Box 12206 - Richmond, VA, 23241
804-648-1012 (V) & 804-649-8794 (F)

OUTLINE OF THIS TRAINING

- I. Sources of the Law
- II. Lease Terminations
 - A. Procedural
 - B. Substantive
- III. Repairs
 - A. Procedural
 - B. Substantive
 - C. Tenant's Assertion
- IV. Security Deposits
 - A. Move in
 - B. Move out
 - C. Warrant in Debt



2

I. SOURCES OF THE LAW

VRLTA:

- Effective July 1, 2017, all tenancies covered by VRLTA except:
 - Landlord is a natural person, an estate, or a legal entity that owns no more than 2 single-family residential dwelling units in its own name subject to a rental agreement, &
 - Landlord opts out of VRLTA by so stating in a rental agreement with a tenant
- Motels, if resided in more than 90 days or subject to written lease more than 90 days
- If resided in less than 90 days, 5 pay or quit notice before self-help eviction
- Not apply to institutions, employees, zero rent tenants



I. SOURCES OF THE LAW



MHLRA:

- All manufactured home parks upon which 10 or more manufactured homes are located on a continual, non-recreational basis
- Contains 17 sections and incorporates 25 sections from the VRLTA which apply only insofar as they are not inconsistent with the MHLRA
- Most favorable provision of *either* the MHLRA *or* the VRLTA should apply

4

I. SOURCES OF THE LAW



Virginia Landlord and Tenant Law:

- All residential housing (with exceptions)
- Applies to single family rental housing when term "dwelling unit" is used
- Older law & not as comprehensive
- Motels, if resided in more than 90 days or subject to written lease more than 90 days
- If resided in less than 90 days, 5 pay or quit notice before self-help eviction
- Not apply to institutions

5

I. SOURCES OF THE LAW



The Lease:

- May be written or oral (must be written under the MHLRA)
- Statute of Frauds requires lease for more than five years to be in writing
- May be week-to-week, month-to-month, six months, one year, or any other length
- Lease automatically may terminate at the end of a set term, or renew in absence of advance written notice of non-renewal

6

I. SOURCES OF THE LAW



Federal Statutes & Regulations:

- Tenants have legal rights not enjoyed by tenants in private housing
- Landlords' discretion concerning admission of tenants is limited
- Tenants pay 30% of income for rent and utilities
- Subsidized tenancies not time limited & tenants may be evicted only for good cause
- Specific notices & pre-termination meeting to contest admission denial or subsidy termination or eviction required

7

II. Lease Terminations – Procedural



Five Steps of Eviction:

- Written notice from landlord to tenant
 - 5 day pay-or-quit for non-payment of rent
 - 21/30 day notice of remediable breach or 30 day notice of non-remediable breach
 - Less than 30 day notice if criminal or willful act that is a threat to health or safety
- Unlawful detainer after notice period ended
- Judgment of possession
- Writ of Possession
- Writ is served, Sheriff waits at least 72 hours, returns & evicts only on date stated

8

II. Lease Terminations – Procedural



21/30 Notice to Vacate for Remediable Breach:

- If non-compliance remediable, written 21/30 day notice
- Most breaches remediable, e.g., noise, pets, poor housekeeping, unauthorized occupants
- If prior 21/30 day notice for breach which was remedied and subsequent breach of like nature, written 30 day non-remediable notice
- Landlord may recover reasonable attorney's fees, unless tenant shows failure to pay rent or vacate was reasonable

9

II. Lease Terminations – Procedural



30 Day Notice to Vacate for Non-remediable Breach:

- Unless non-payment of rent, or willful or criminal act not remediable which poses a threat to health or safety, 30 day written notice to vacate required
- Less than 30 day written notice if willful or criminal act poses a threat to health or safety
- Notice not necessary when term is to end at a certain time
- Unlawful detainer filed prior to expiration of notice period should be dismissed

10

II. Lease Terminations – Procedural

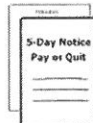


Three opportunities to pay rent late and stay:

- Within any grace period of the lease – pay rent
- Before an unlawful detainer is filed – pay rent & late fees
- After an unlawful detainer is filed & on or before 1st court date – pay all unpaid rent, unpaid late fees, court costs & attorney's fees (called redemption): may do this only once in a 12 month period of time
- Also may offer redemption tender from govt. or non-profit on or before 1st court date

11

II. Lease Terminations – Procedural



5 Day Pay or Quit Notice (for nonpayment of rent):

- If non-payment of rent, landlord must give tenant written notice to either move or pay rent in 5 days (14 days for conventional public housing)
- Notice must be for a "sum certain"
- Landlord may not refuse tender of rent or other payment
- Landlord may waive timely payment of rent or waive other lease breach

12

II. Lease Terminations – Procedural



Right of Redemption:

- Unlawful detainer dismissed if tenant pays all amounts owed: (i) all rent & arrears due as of first court date, (ii) all late charges & attorney's fees in written lease, (iii) interest and (iv) court costs
- On or before the first court date
- Tenant can give written commitment, from local government or non-profit, to pay redemption within 10 days
- Only once every 12 months tenant lives in same place

13

II. Lease Terminations – Procedural



- Landlord may not lock tenant out, cut off utilities, or do a self-help eviction
- If landlord does any of the above, tenant should go to General District Court and file a Tenant's Petition for Relief from Unlawful Exclusion (Form DC-431)
- Tenant may ask for recovery of possession, resumption of interrupted utility, termination of rental agreement, actual damages and reasonable attorney fees

14

II. Lease Terminations – Substantive



Prohibited provisions in rental agreements:

- Forgoing rights & remedies under VRLTA or MHLRA
- Confession of judgment
- Paying landlord's attorney's fees, except as authorized by VRLTA or MHLRA
- Limitation of landlord's liability
- Agreeing to firearm restriction or prohibition as a tenant in public housing
- Security deposit in excess of two months' rent
- If landlord brings an action to enforce prohibited provision, tenant may recover actual damages and reasonable attorney's fees

15

II. Lease Terminations – Substantive



- Ambiguous lease provisions should be construed against the drafter, i.e., the landlord
- Under Virginia common law, a writing is construed against the party who prepared it

16

II. Lease Terminations – Substantive



Landlord's rules & regulations must be reasonable:

To be enforceable, a landlord's rule must:

- Promote convenience, safety or welfare of tenants, preserve property from abuse, or make fair distribution of services & facilities
- Be reasonably related to the purpose for which it is adopted.
- Apply to all tenants in a fair manner
- Be sufficiently explicit to fairly inform tenant what he/she must & must not do
- Not be for evading landlord's obligations
- Be provided to tenant when lease entered

17

II. Lease Terminations – Substantive



Unauthorized Residents:

- Tenants have the right to reasonable accommodation of guests and visitors
- No bright line between permanent resident and temporary guest and courts consider:
 - Intended length of stay
 - Any monetary payment
 - Moving in belongings
 - Receipt of mail at tenant's address
 - Guest's regular receipt of other guests at the premises
 - Whether alleged resident has a place of regular abode other than the tenant's dwelling

18

II. Lease Terminations – Substantive



Poor Housekeeping:

- Housekeeping which does not pose a threat to the health or safety of others should not be a grounds for eviction
- Cases often raise fair housing and Americans with Disabilities Act (ADA) issues of reasonable accommodations of handicaps which make thorough housecleaning and tenant maintenance difficult

19

II. Lease Terminations – Substantive



Tenant Responsibility for Acts of Others:

- Tenant responsible for conduct of persons on the premises with tenant's consent, whether known by the tenant or not
- Landlord may evict the entire family for criminal or severely disruptive acts of one family member or a guest.
- Possible defenses: tenant did not know and could not have known conduct was occurring or might occur, tenant did everything reasonable to stop it, wrongdoer was not invited onto the premises by the tenant or household member.

20

II. Lease Terminations – Substantive



Tenant not to be Evicted if Victim of Family Abuse:

- Lease not terminate due to family abuse if:
 - Tenant provides to landlord written documentation as victim of family abuse & exclusion of perpetrator within 21 days
 - Tenant notifies landlord of perpetrator's return within 24 hours (or within 7 days if had no knowledge)
- Otherwise, tenant responsible for co-tenants, occupants, guests & invitees on premises with tenant's consent, whether known or not

21

II. Lease Terminations – Substantive



Limitation on Landlord's Barring Tenant's Guest/Invitee:

- Tenant's guest or invitee may be barred by written notice, served on both tenant and guest, for conduct on landlord's property, which violates the lease or the law, and describes the conduct which is the basis of the action
- Tenant may file Tenant's Assertion to review landlord's action

22

II. Lease Terminations – Substantive



Prohibition on retaliatory conduct or eviction:

- No selective rent increase, decrease in services, or bringing or threatening action for possession after landlord knows tenant:
 - Complained to govt agency about housing
 - Complained to or sued landlord about violation of law
 - Organized or joined tenants' organization
 - Testified in court against landlord
- Landlord may bring action for possession if tenant violates housing code, tenant is in default in rent, or tenant breached lease affecting health & safety

23

III. Repairs – Procedural



- To get repairs, tenants must do four things:
 - Be current in rent & stay current
 - Give written notice to landlord (or have someone else do so)
 - Wait a reasonable period of time
 - File a Tenant's Assertion (if needed)

24

III. Repairs – Procedural – Step 1



- Pay into court the amount of rent called for under the rental agreement, within five days of the due date
- Need not be current in rent at the time notice is given to the landlord, but if tenant is not current at the time notice is given to landlord, tenant is unlikely to be current later on
- For federally subsidized tenants, only the tenant's portion of the rent needs to be paid.

25

III. Repairs – Procedural – Step 2



- Notice given in writing by regular mail or hand delivery, with sender retaining sufficient proof of having given such notice,
- Mailbox rule for snail mail
- No mailbox rule for email
- No mailbox rule for text message
- Receipt could be demonstrated with a chain between the sender and the receiver showing both the transmission of the message and a response
- To call, or not to call, the building or housing inspector?

26

III. Repairs – Procedural Step 3



- Reasonable time is left to the discretion of the court
- Rebuttable presumption that more than 30 days is unreasonable
- In most cases, 21 days is presumptively reasonable based upon Code of Virginia §§55-225.13 & 55-248.21
- May be shorter than 21 days in cases where there is an emergency constituting an immediate threat to health or safety

27

III. Repairs – Procedural – Step 4



- If repairs not made, take written notice & next month's rent to General District Court & file a Tenant's Assertion (rent escrow case)
- Tenant must pay into court rent called for under the lease, within 5 days of due date
- Some court clerks will not allow Tenant's Assertion to be filed without also filing a copy of notice provided to the landlord
- Tenant must assert a condition which is material non-compliance with lease or provisions of law

28

III. Repairs – Procedural



Actionable conditions: §§55-225.12, 55-248.27, 55-248.48

- Material noncompliance by the landlord with the rental agreement
- Material noncompliance by the landlord with provisions of law
- Conditions which, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants

29

III. Repairs – Procedural



Prior to granting relief, tenant shall show:

- Prior to filing, landlord was served written notice by tenant or notified by a violation or condemnation notice, and landlord failed to remedy after reasonable opportunity (rebuttable presumption that more than 30 days is unreasonable)
- Tenant paid into court the rent called for under the lease, within 5 days of due date
- Landlord may show conditions do not exist, conditions been remedied, conditions caused by tenant, or tenant unreasonably refused entry to permit correction of conditions

30

III. Repairs – Procedural



- Court may order as follows: terminate lease, order money in escrow to landlord or tenant, order escrow continued until conditions remedied, rent abatement, disburse money to tenant or landlord or contractor to make repairs, refer to proper state or municipal agency, disburse money to pay mortgage, or satisfy mechanic's or materialman's lien
- If condition not remedied within 6 months of escrow, court shall award escrow to tenant
- No rent withholding, no repair & deduct, tenant cannot just move without notice

31

III. Repairs – Substantive



Landlord's Obligations:

- 1) Follow building & housing codes
 - 2) Make repairs & keep place fit and habitable
 - 3) Keep common areas clean and safe
 - 4) Maintain electrical, plumbing, sanitary, heating, ventilating, AC & other facilities
 - 5) Prevent moisture & growth of mold
 - 6) Maintain garbage receptacles for garbage
 - 7) Supply water, hot water, AC if provided, and heat in season; unless tenant alone controls the utility
- Parties may agree in writing that tenant perform duties 3, 6 and 7, only if done in good faith and not to evade landlord obligations

32

III. Repairs – Substantive



Tenant's Obligations:

- Comply with tenant duties in building and housing codes
- Keep unit clean and safe
- Keep premises free from insects & pests and promptly notify landlord of insects or pests
- Use utilities & appliances reasonably
- Not destroy or mess up property
- Not disturb neighbors
- Prevent moisture & growth of mold
- Not paint if premises built prior to 1978 and lease requires prior written approval
- Be responsible for conduct of persons on the premises with tenant's consent
- Follow lease & reasonable rules

33

III. Repairs – Substantive



Bed bugs:

- Under §55.248.16, effective July 1, 2017, "the tenant shall be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied." (emp. added)
- Fault means the omission of some duty which the tenant ought to perform, and is practically synonymous with *negligence*

34

III. Repairs – Substantive



- Under VRLTA , tenant is responsible for:
 - Added cost of treatment due to tenant's unreasonable delay in reporting
 - Cost of treatment due to tenant's fault in failing to prevent infestation
- Under non-VRLTA, tenant is responsible:
 - In multi-family housing, where tenant failed to prevent infestation
 - In single family housing, where infestation not caused by defects in the structure

35

III. Repairs – Substantive



- For public housing tenancies, see HUD Notice PIH-2012-17
- For HUD multi-family housing tenancies, see HUD Notice H-2012-17
- For HUD Voucher tenancies, see Notice PIH-2012-17
- To sue or be sued?
 - Pay undisputed charges & wait
 - Pay under protest
 - Use Tenant's Assertion

36

III. Repairs – Substantive

LL Non-compliance as Defense to Non-payment of Rent Case:



- Poor housing conditions may be a defense, if:
 - Prior to UD, landlord served written notice by tenant or notified of violation
 - Landlord did not remedy after reasonable opportunity
- Tenant, if in possession, must pay into court amount of rent found to be due & unpaid
- Landlord may show conditions do not exist, conditions remedied, conditions caused by tenant, or tenant unreasonably refused entry to permit correction
- Court may: order rent set-off, end lease, or refer matter to housing inspector

27

III. Repairs – Tenant's Assertion



- Trial must be held within 15 days of date of service
- Get local building inspector's office, fire marshal's office and/or health department involved early and often, and subpoena them and their records to trial
- Use dramatic photographs as evidence
- File before landlord files a Summons for Unlawful Detainer
- Don't let the restrictions on the severity of actionable conditions intimidate you
- Carefully review the statutory conditions and defenses with client

38

IV. Security Deposits – Move In



Inspection of dwelling unit at move in:

- Within five days of move in, landlord must give tenant written report listing damages and tenant must submit any changes, in writing, within five days, otherwise deemed correct
- Landlord also may allow tenant to prepare a written report listing damages and landlord must submit any changes, in writing, within five days, otherwise deemed correct
- Parties may prepare & sign written report together, in which case deemed correct

39

IV. Security Deposits – Move Out



Limit on security deposits; move out inspection:

- Limited to two months' rent
- Applied to rent, reasonable late fees in lease, damages beyond reasonable wear & tear, other charges in lease
- Refund and/or itemized list 45 days after move out
- New LL (if any) must return security deposit
- LL must make reasonable efforts to advise tenant of right to be present at move out inspection
- Tenant may advise landlord of desire to be at inspection; landlord notify tenant of date & time of inspection; must be within 72 hours of move out

40

IV. Security Deposits – Warrant in Debt



- Jurisdictional limit in Regular Division (where attorneys are allowed) is \$25,000 and jurisdictional limit in Small Claims Division (where attorneys are not allowed) is \$5,000
- Venue is where rental property was located or where defendant/landlord resides
- Filing fee is \$44, plus \$12 service fee for each Defendant, and if Plaintiff cannot afford the filing and service fees, Petition for Proceeding in Civil Case without Payment of Fees or Costs (Form CC-1414) may be filed

41

IV. Security Deposits – Warrant in Debt



- Must have complete name & address of Defendant (physical address, not a mailing address)
- Circuit Court Clerk has a list of "assumed or fictitious" names
- If suing corporation, LLC, etc., registered agent must be served; may be obtained from S.C.C.
- Warrant in Debt must be served at least five days before the court hearing
- Mail a copy to the Defendant at least ten days before the court hearing & file with the court a Certificate of Mailing (Form DC-413)

42

IV. Security Deposits – Warrant in Debt



- At first hearing, if case is contested it will be set for a later trial
- On motion of either party or the judge *sua sponte*, pleadings (i.e., a Bill of Particulars and a Grounds of Defense) may be ordered
- Witnesses may be subpoenaed with a Request for Witness Subpoena (Form DC-325); must be served at least 10 days before trial
- Documents may be subpoenaed with a Subpoena *duces tecum*. (Form DC-336); must be served at least 15 days before trial

43

IV. Security Deposits – Warrant in Debt



- Move in and move out inspection reports should form the basis of the case
- Items on both lists are not tenant's fault and cannot be used as a reason for a deduction from the security deposit
- Items not on the move in inspection, but on the move out inspection, are a reason for a deduction from the security deposit only if the damage is beyond ordinary wear & tear and ordinary depreciation

44

IV. Security Deposits – Warrant in Debt



- If damages are beyond ordinary wear & tear and ordinary depreciation, landlord is not entitled to get replacement value, but rather, to the value of the damaged item minus depreciation
- To determine the useful life of residential rental property, see, IRS Publication 527 - Residential Rental Property
- Landlord's compliance with move in inspection, and move out inspection, should be a pre-condition to retention of any portion of the security deposit for alleged damages

45
